

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0239

Sales Tax

Calendar Years 1995, 1996, & 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1995, 1996, & 1997.

The taxpayer produces personal and business checks in a variety of designs, styles and formats. The checks are marketed through more than 4,200 banks, credit unions, and other financial institutions. The company is privately owned by individuals from England. The taxpayer has a manufacturing facility in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the error was immaterial.

The Department disagrees. The total use tax liability for the audit period was \$389,000. Of this amount, the taxpayer only paid use tax on 40% of the use tax liability. The Department considers this to be a material error. Furthermore, the audit issues were repeat issues from the prior audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.